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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of California-American Water
Company (U210W) for Approval of the
Monterey Peninsula Water Supply Project and
Authorization to Recover All Present and
Future Costs in Rates.

Application 12-04-019
(Filed April 23, 2012)

**CALIFORNIA-AMERICAN WATER COMPANY RESPONSE TO THE
WATER PLUS MOTION TO DISMISS
THE PROCEEDING OF THE MONTEREY PENINSULA WATER SUPPLY PROJECT**

Sarah Leeper
California-American Water Company
555 Montgomery Street, Suite 816
San Francisco, CA 94111
Telephone: 415.863.2960
Facsimile: 415.397.1586
Email: sarah.leeper@amwater.com

Lori Anne Dolqueist
Nossaman LLP
50 California Street, 34th Floor
San Francisco, CA 94111
Telephone: 415.398.3600
Facsimile: 415.398.2438
Email: ldolqueist@nossaman.com

Attorneys for Applicant California-American Water Company

April 13, 2016

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Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), California-American Water Company (“California American Water”) hereby responds to the *Motion to Dismiss the Proceeding of the Monterey Peninsula Water Supply Project* (“Motion”), filed by Water Plus on March 30, 2016. This is the second motion to dismiss filed by Water Plus. Its first motion, which asserted that the Commission should dismiss this proceeding due to unsupported and unsubstantiated claims of data tampering and fraud with respect to the environmental review model, was denied by assigned Administrative Law Judge Weatherford. As discussed in more detail below, Water Plus once again fails to meet the Commission’s standard for dismissal of an application. The Commission should deny Water Plus’ Motion and continue its review of California American Water’s request for a Certificate of Public Convenience and Necessity (“CPCN”) for the Monterey Peninsula Water Supply Project (“MPWSP”).

Water Plus offers as support for its Motion the following arguments: (1) that California American Water’s amended project description violates the Agency Act, (2) that California American Water’s test well has violated its Coastal Commission permit, (3) that the water from the groundwater recharge project (“GWR”) will be unsafe, unreliable, and too costly, and (4) that

the model used for the Commission's environmental review reveals fraud and data tampering. As with its previously denied Motion to Dismiss, the current Motion cannot be granted because it does not state the laws supporting the Motion and the ruling request and the Motion demonstrates, on its face, that triable issues of material fact remain.

Contrary to Water Plus' argument, California American Water's amended project description, which discusses the seawater intake system, does not violate the Agency Act. Although Water Plus tries to frame its arguments as new, it is merely rehashing water rights issues that have already been addressed in testimony, hearings and briefs. Moreover, with respect to the Agency Act, Water Plus appears to be asking to the Commission to address what Water Plus believes is inappropriate inaction by another agency:

In other words, Cal Am cannot legally draw and export, to the ocean or anywhere else, any groundwater from that basin. The Monterey County Water Resources Agency ("MCWRA") must enforce the act that created it. To date, it has failed to do so. The Commission must not abet or join in the agency's failure.¹

Water Plus' dissatisfaction with MCWRA does **not** support Commission dismissal of this proceeding.

Similarly, Water Plus' accusations regarding the test well would fall within the purview of the Coastal Commission as the permitting agency if they had any validity, which they do not. Water Plus claims that California American Water's proposal to use the test well as one of the MPWSP's back-up wells violates the Coastal Commission permit for the test well.² While California American Water disagrees with this contention, even assuming that Water Plus was correct this would be a matter to be resolved by the Coastal Commission, not by dismissing California American Water's CPCN application.

Water Plus makes several unsubstantiated claims regarding the safety, reliability and cost of the GWR water. The testimony provided by the Monterey Peninsula Water Management District ("MPWMD") and the Monterey Regional Water Pollution Control Agency

¹ Motion, p. 4.

² Motion, p. 5.

(“MRWPCA”) refute the Water Plus’ claims. Moreover, the issues raised by Water Plus in its Motion are the very issues of triable fact that are being considered in the current evidentiary hearing, thus negating its request for dismissal.

Finally, Water Plus renews its claims of data tampering and fraud with respect to the model used for the Commission’s environmental review of the MPWPS. These issues were already addressed in the October 29, 2015 Administrative Law Judge’s Ruling Denying Motion to Dismiss. Contrary to Water Plus’ argument, this issue does not “remain alive.”³ The assigned Administrative Law Judge has already ruled that Water Plus’ accusations of data tampering and fraud do not provide justification for dismissing California American Water’s application.

Previously, in considering a motion to dismiss an application, the Commission has stated:

The question becomes whether the Commission and the parties would be squandering their resources by proceeding to an evidentiary hearing when the outcome is a foregone conclusion under the current law and policy of the Commission.⁴

Water Plus has failed to demonstrate that the outcome it espouses is a “foregone” conclusion under the current law and policy of the Commission. Water Plus has failed to provide any legal justification for dismissing the current proceeding and in its Motion has actually highlighted several triable issues of fact.

Early in this proceeding, Administrative Law Judge Weatherford denied a motion to dismiss filed by Marina Coast Water District:

I deny the motion to dismiss because there is good cause for the Commission to proceed with an examination of the Monterey Peninsula Water Supply Project proposed in A.12-04-019. The people and entities in the Monterey Division service area of the Applicant face the risk of losing -- in less than five years -- most of the water supply that presently serves them....Given the overarching public interest in finding a source or sources of replacement water for the Monterey Peninsula as soon as practicable, it is reasonable to proceed with A.12-04-019.⁵

³ Motion, p. 2.

⁴ D.99-11-023, p. 7.

⁵ *Administrative Law Judge’s Ruling*, June 1, 2012, pp. 2-3.

This reasoning is still applicable. California American Water urges the Commission deny Water Plus' Motion and proceed with its evaluation of the MPWSP.

April 13, 2016

Respectfully submitted,

By: /s/ Sarah E. Leeper

Sarah E. Leeper

Attorney for Applicant
California-American Water Company